

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HILTON LLOYD KELLER,

Plaintiff,

v.

ADRIAN FEINERMAN and DR. ELYEA,

Defendants.

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Case No. 3:06-cv-661 JPG

ORDER

On December 7, 2007, the Plaintiff, a prisoner acting pro se, filed an amended complaint in the action (Doc. 16). In answering the amended complaint both Defendants Feinerman (Doc. 17) and Elyea (Doc. 21) raised the affirmative defense of failure to exhaust administrative remedies.

The Seventh Circuit recently held that discovery on the merits should not begin until the question whether a plaintiff has exhausted his administrative remedies within the meaning of the Prison Litigation Reform Act has been resolved. *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008). In an attempt to comply with *Pavey* as closely as possible, the Court will follow the procedure outlined below.

1. Defendants shall notify the Court by **April 22, 2009**, whether they intend to pursue the defense that Plaintiff failed to exhaust his administrative remedies.
2. The parties are granted 30 days in which to conduct additional discovery. Discovery is limited exclusively to the issue of exhaustion of administrative remedies.
3. The undersigned magistrate judge will hold a hearing on the question whether Plaintiff has exhausted his administrative remedies on **June 2, 2009, at 2:00 p.m.** in the East St. Louis Federal Courthouse. Plaintiff shall participate by videoconference. Defendants shall appear in person. In lieu of witness testimony, the parties may

submit briefs, affidavits, and exhibits relevant to the question of exhaustion. Briefs, affidavits, and exhibits are due **May 26, 2009**.

4. The undersigned will make a written Report and Recommendation to the presiding United States District Judge recommending a factual determination on the exhaustion issue based on the evidence presented at the hearing.

IT IS SO ORDERED.

DATED: April 8, 2009

s/ Donald G. Wilkerson
DONALD G. WILKERSON
United States Magistrate Judge